

UNITED STATES DEPARTMENT OF AGRICULTURE

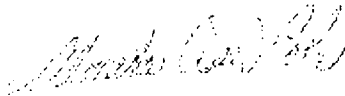
Farm Service Agency
Washington, DC 20250

Notice FC-122

For: State and County Offices

Release of Liability for Guaranteed Loans

Approved by: Acting Deputy Administrator, Farm Loan Programs



1 Overview

A
Background

FmHA Instructions 1980-A and 1980-B are silent on the issue of lenders' granting release of liability to borrowers, except for cases involving transfer and assumption. See FmHA Instruction 1980-B, section 1980.123(f).

B
Purpose

This notice provides:

- FSA guidelines when lenders request to release from liability borrowers who are indebted for a guaranteed loan
- additional guidance regarding the information and actions that need to be considered before consenting to a lender's request for release of liability for guaranteed Farm Loan Program borrowers.

2 Releasing Borrower From Liability

A
Authority

If it is determined to be in the Government's best interest, SED's:

- may concur with a lender's request to release a borrower from liability, according to subparagraphs B and C
- shall resolve any legal question concerning the lender's or borrower's activities with OGC before releasing the borrower from liability.

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Disposal Date

May 1, 1998

Distribution

State Offices; State Offices relay to County
Offices

2 Releasing Borrower From Liability (Continued)

B

Divorce

FmHA Instruction 1980-B, section 1980.130, requires the lender to reasonably and prudently service the guaranteed loan. When borrowers have been divorced and one of the individuals has withdrawn from the operation, the individual who has withdrawn from the operation may reasonably be released from liability under certain conditions. The lender must provide documentation showing that **all** of the following conditions have been met:

- a divorce decree or final property settlement shows the withdrawing party is not responsible for the loan payments
 - the withdrawing party's interest in the security is conveyed to the person or entity with whom the loans will be continued
 - the withdrawing party does not have present or likely future repayment ability or other assets to apply on the debt, or the loan to value ratio is no greater than .7 and a positive cash flow can be projected.
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C

Liquidation of the Account

According to FmHA Instruction 1980-B, section 1980.146(d)(1)(iii), the lender is responsible for making the maximum collection possible when liquidating guaranteed loans. Making the maximum collection possible on the indebtedness includes more than just collections resulting from the disposal of collateral. The lender must specify in its liquidation plan how to collect any remaining loan balances after the collateral has been liquidated from any guarantors or through any judgments. Any proposal to release the borrower or guarantor from liability should be addressed in the liquidation plan.

To ensure that adequate consideration has been given, before releasing a borrower or guarantor from liability, the following should be considered:

- potential income
 - inheritance prospects
 - the possibility that collateral has not been properly accounted for
 - the availability of other income or assets which are not security for the guaranteed debt
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Continued on the next page

2 Releasing Borrower From Liability (Continued)

C

Liquidation of the Account (Continued)

- the possibility that assets have been concealed or improperly transferred
 - the effect of other guarantors on the loan
 - cash consideration or other collateral in exchange for the release of liability.
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D

Contact

Direct questions about this notice to LSPMD, Guaranteed Loan Servicing Branch through the Area Office.
